HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.26823 of 1998

2.8.2007

Between

T h e Management of Superintending Engineer, Somasila Project Circle, Nellore ..Petitioner

AND

S.Penchala Narasaiah and another ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

-

W.P. No.26823 of 1998

This writ petition is directed against an Award passed by the Labour Court, Guntur on 6.1.1997 in I.D.No.175 of 1995, which came to be instituted by the first respondent herein. It is not in dispute that the first respondent was engaged as Nominal Muster Roll (for short, 'NMR') watchman in the Somasila Project with effect from 1.3.1979. He seems to have worked in S.P. Division No.III of the Somasila project from 1.3.1979 upto 30.9.1981. Subsequently, he was engaged by the Somasila Project Mechanical Division, Nellore with effect from 1.10.1981 onwards. He was entrusted with the watch and ward duties of the Stores pertaining to the machinery spare parts section at Somasila till 26.7.1982. As a theft of certain spare parts from the Stores was reported on 25.7.1982, the first respondent had stayed away from the duties. However, the first respondent had raised a Dispute pointing out that he had been terminated in July, 1982 suspecting that he was responsible for the theft of spare parts from the Mechanical Stores of the Somasila Project. He therefore alleged that the termination of his employment amounts to retrenchment. At that stage, the first respondent had raised Industrial Dispute under Section 2(a)(2) of the Industrial Disputes Act, which was entertained as I.D.No.360 of 1989. The Labour Curt had returned a finding in his favour and ordered for reinstatement of the first respondent

herein back into service without back wages and continuity of service and also ordered for regularization of the services of the first respondent and to pay him regular scale of pay on par with regular employees of the same category. Pursuant to this Award passed by the Labour Court in I.D.No.360 of 1989, the first respondent came to be reengaged as NMR watchman in Mechanical Sub Division No.III of the Somasila Project.

But however, the first respondent drawing inspiration from the orders passed by the State Government in G.O.Ms.No.143, Irrigation (Services V) Department dated 16.3.1984 solicited regularization of his services. The State Government through its order contained in G.O.Rt.No.2652 dated 18.11.1995 had referred the Dispute for adjudication to the Labour Court, Guntur and that is how, the case in I.D.No.175 of 1995 came to be entertained. The Labour Court found that the action of the Superintending Engineer, Somasila Project in not regularizing the services of the first respondent is not justified. It is this Award of the Labour Court, which is put in issue in this writ petition.

I have heard Smt.V.Santhi Sree, Assistant Government Pleader for Irrigation and Sri M.V.S.Sai Kumar, counsel for the first respondent.

It is not in dispute that the first respondent has since been reinstated to duty pursuant to the Award passed by the Labour Court in I.D.No.360 of 1989 and he is continuing in service in Somasila Project. However, the learned Assistant Government Pleader would contend that the issue of regularization of services of the first respondent workman has got to be considered in the context of the provisions contained

in Act 2 of 1984 read with the scheme of regularization announced by the State Government through their G.O.Ms.No.212, G.A.D. dated 22.4.1994 and without any regard to these aspects of the matter, the Labour Court had mechanically passed the Award ordering for regularization of the services of the first respondent.

Per contra, the learned counsel for the first respondent would contend that the Award passed by the Labour Court had got to be understood and confined in the context of the orders of the State Government contained in G.O.Ms.No.143, Irrigation (Services V) Department dated 16.3.1984 and so far as the regularization of his services is concerned, the claim of the first respondent workman will get fructified as an employee of the work charged establishment instead of being treated as NMR workman and as and when the State Government undertakes the issue of regularizing the services of the work charged establishment, along with all others, he would also reap the same benefit.

In view of these rival contentions canvassed, it becomes necessary to examine and analyze the scheme of absorption of NMR workers into the work charged establishments announced by the State Government through G.O.Ms.No.143, Irrigation Department dated 16.3.1984. A perusal of the orders of the State Government contained in G.O.Ms.No.143 would disclose the backdrop of the issue of absorption of NMR workers into the work charged establishments of the State Government. The persistent demand of a large number of NMR workers of the State Government particularly in the Irrigation Projects was engaging the attention of the State Government obviously for a

very long time. Therefore, to find out a suitable and satisfactory answer to the problem, as is possible, a scheme of absorption has been worked out by the State Government and set out in detail in G.O.Ms.No.143 dated 16.3.1984. It would be useful to extract the decision of the State Government, contained in paragraph 3 of the aforementioned G.O.

> "3. Government after careful examination consider that there would be larger outlays on projects in the near future, and direct, that the NMR Workers who have completed five years of service be converted as Work charged Employees subject to the following conditions:-
>
> 1. The required number work charged posts for converting the N.M.R. Workers with more than five years of service are deemed to have been created;
> 2. The ban orders issued in G.O.Ms.No.130, I&P Deptt., dt.18.3.1981 are deemed to have been relaxed to this extent;
> 3. Rule of Reservation should be followed at the time of conversion of N.M.R. Workers as Work charged Employees in terms of G.O.Ms.No.186, S.W. Department dt.5.12.1979;
> 4. The conversion of N.M.R. Workers into Work charged establishment can be without subjecting them to the normal process of recruitment as provided in the relevant recruitment rules.
>
> -
>
> HOWEVER:
>
> a) A formal notification of vacancy may be made to the Employment Exchange concerned;
> b) After filling up the vacancy the appointing authority will furnish all relevant particulars of the candidate

to the Employment Exchange;

c) Such appointment should be made under intimation to the Director of Employment Exchange;

5. The N.M.R. Workers who have completed five years of service from the date of their first appointment excluding breaks in service will be eligible for conversion into Work charged Establishment. This is subject to the condition that the breaks in service in any spell shall not exceed six months."

It is clear that the State Government has taken a stand in principle that all such NMR workers with more than five years of service are entitled to be converted as part of the work charged establishment of the Department and to the extent of such necessity, the number of posts in the work charged establishment are deemed to have been created and to that extent, the ban imposed upon further recruitment into the work charged establishments is also deemed to have been relaxed. The criterion for converting an NMR worker into work charged establishment is that he should have completed five years of service including the breaks, which did not last for six months and above. Therefore, the first respondent shall be deemed to have completed five-year period of service as NMR workman by 1.3.1984 in view of the Award passed by the Labour Court on the previous occasion in I.D.No.360 of 1989 wherein the first respondent workman had been ordered to be conferred the benefit of continuity of service. Therefore, the benefit of the scheme of absorbing the first respondent into the work charged establishment of the Somasila Project of the Irrigation

Department is available in terms of the orders contained in G.O.Ms.No.143. The writ petitioner has obviously misconstrued the contents of the orders of the State Government in G.O.143 wherein there is no stipulation that the employee concerned should be physically available and serving the unit in which he was employed as an NMR workman as on 16.3.1984, the date on which the G.O.143 was issued.

I therefore conclude that what the Labour Court had implied and meant was to declare the first respondent as entitled to reap the benefits of the scheme announced by the State Government through G.O.Ms.No.143, when it passed the Award in question. To make the position very obvious and clear, the Award passed by the Labour Court can be modified by pointing out that the first respondent workman shall be deemed to have become part of the work charged establishment of the Somasila Project of the State Government after completion of five years of service as NMR watchman. As part of the work charged establishment, he will be entitled to derive all such benefits which similarly placed employees have been conferred.

The writ petition is disposed of directing the petitioner to work out the benefits that are liable to be conferred upon the first respondent workman by treating the services rendered by him from 1.3.1979 to 25.7.1982 and adding thereto the services rendered by him from the date he stood reinstated pursuant to the Award passed by the Labour Court in I.D.No.360 of 1989, by adding both the spells of service, the first respondent workman becomes entitled to be treated as a part of the work charged establishment upon completion of five years of service. The

period in between 1982 to the date of reinstatement pursuant to the I.D.No.360 of 1989 is not liable to be reckoned, for any other benefit the Labour Court on the previous occasion had denied him the benefit of back wages.

With this, the writ petition stands disposed of. No costs.

_____

NOOTY RAMA MOHANA RAO.J.

2.8.2007
psr